

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)	
to open a docket to implement the provisions of)	
Section 6w of 2016 PA 341 for)	Case No. U-18239
CONSUMERS ENERGY COMPANY'S)	
service territory.)	
_____)	
)	
In the matter, on the Commission's own motion,)	
to open a docket to implement the provisions of)	Case No. U-18248
Section 6w of 2016 PA 341 for)	
DTE ELECTRIC COMPANY'S service territory.)	
_____)	
)	
In the matter, on the Commission's own motion,)	
to open a docket to implement the provisions of)	Case No. U-18253
Section 6w of 2016 PA 341 for)	
UPPER MICHIGAN ENERGY RESOURCES)	
CORPORATION'S service territory.)	
_____)	
)	
In the matter, on the Commission's own motion,)	
to open a docket to implement the provisions of)	
Section 6w of 2016 PA 341 for)	Case No. U-18254
UPPER PENINSULA POWER COMPANY'S)	
service territory.)	
_____)	
)	
In the matter, on the Commission's own motion,)	
to open a docket to implement the provisions of)	Case No. U-18258
Section 6w of 2016 PA 341 for)	
CLOVERLAND ELECTRIC COOPERATIVE'S)	
service territory.)	
_____)	

At the February 5, 2018 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER DENYING REHEARING AND REOPENING

On January 20, 2017, the Commission commenced proceedings for the implementation of Section 6w of 2016 PA 341 (Act 341), MCL 460.6w, for Consumers Energy Company (Consumers) in Case No. U-18239 and for DTE Electric Company (DTE Electric) in Case No. U-18248. On February 28, 2017, the Commission commenced similar proceedings for Upper Michigan Energy Resources Corporation (UMERC) in Case No. U-18253, Upper Peninsula Power Company (UPPCo) in Case No. U-18254, and Cloverland Electric Cooperative (Cloverland) in Case No. U-18258. Pursuant to the Commission's orders, all five utilities eventually filed applications to implement a state reliability mechanism (SRM) capacity charge under MCL 460.6w(8).

Prehearing conferences were held in each proceeding, and the Commission Staff (Staff) participated. In Case Nos. U-18239 and U-18248, intervention was granted to, among others, Wolverine Power Marketing Cooperative, Inc. (Wolverine), Energy Michigan, Inc. (Energy Michigan), and Constellation NewEnergy, Inc. (CNE). In Case Nos. U-18253, U-18254, and U-18258, intervention was granted to CNE and Michigan Electric Cooperative Association (MECA). Contested cases were held in all five matters, and the Commission read the records.¹

¹ Under MCL 460.6w(3), final orders needed to issue no later than December 1, 2017.

On November 21, 2017, the Commission issued orders in Case Nos. U-18239 and U-18248 (November 21 orders) setting SRM capacity charges for Consumers and DTE Electric, respectively; and on November 30, 2017, the Commission issued orders in Case Nos. U-18253, U-18254, and U-18258 (November 30 orders) setting SRM capacity charges for UMEREC, UPPCo, and Cloverland, respectively. In addition to the determination of the capacity charge in each case, all of the orders made findings with regard to: (1) the time frame for the levying of any capacity charges; (2) the reconciliation of capacity charges in annual power supply cost recovery proceedings;² (3) the applicability of the capacity charge to customers of alternative electric suppliers (AES) on a pro rata basis; and (4) the mechanism for the annual review of the charge.

On December 20, 2017, Energy Michigan filed petitions for reconsideration or rehearing of the November 21 orders pursuant to Mich Admin Code, R 792.10436 (Rule 436) and 792.10437 (Rule 437). Energy Michigan claims error under Rule 437 (the rehearing rule) with regard to the Commission's determination that the capacity charge is applicable to AES customers.

On December 20, 2017, Wolverine filed petitions for rehearing of the November 21 orders pursuant to Rule 437. Wolverine claims error under Rule 437 with regard to the Commission's determination that the capacity charge is applicable to AES customers and that placement of the charge on the AES would constitute a wholesale transaction.

On December 21, 2017, CNE filed petitions for rehearing and reconsideration of the November 21 orders and the November 30 orders pursuant to Rule 437. CNE claims error under Rule 437 with regard to the Commission's determination that the capacity charge is applicable to AES customers, and applicable on a pro rata basis. CNE also filed motions to reopen the

² This finding was not applicable to Case No. U-18258.

proceedings decided by the November 30 orders pursuant to Rule 436, to allow the filing of evidence similar to evidence filed in other proceedings.

On December 29, 2017, MECA filed petitions for rehearing of the November 30 orders pursuant to Rule 437. MECA claims error under Rule 437 with regard to the Commission's determination that the capacity charge is applicable to AES customers and that placement of the charge on the AES would constitute a wholesale transaction.

On January 2, 2018, Cloverland filed a petition for rehearing and a motion to reopen the record in Case No. U-18258 pursuant to Rules 436 and 437. Cloverland claims error under Rule 437 with regard to the Commission's determination that Act 341 requires the Commission to set capacity charges for full service members of an electric cooperative.³ Cloverland also claims error with respect to the approved rate design, and seeks reopening of the record to file evidence of the unintended consequences of the rate design for Cloverland and its members/customers.

On January 10, 2018, the Staff, Consumers, and DTE Electric filed responses to the Energy Michigan, Wolverine, and CNE petitions. On January 11, 2018, UPPCo and UMERL filed responses to the CNE and MECA petitions. On January 19, 2018, the Staff filed responses to MECA's petitions. On January 23, 2018, the Staff filed a response to Cloverland's petition.

Application of the Capacity Charge to Choice Customers

MECA, CNE, Wolverine, and Energy Michigan all seek rehearing of the Commission's determination that the charge shall be placed on the AES customer receiving capacity service. Additionally, Wolverine and MECA dispute the related finding that placing the charge on the AES would constitute a wholesale transaction between the utility and the AES, and CNE argues that the

³ Cloverland is the only electric cooperative with a choice customer.

AES should be able to determine the amount of the charge, or, at a minimum, who among its customers should be assessed.

In their responses, the Staff, Consumers, and DTE Electric point out that the petitions do not meet the standards of Rule 437 and should be denied. Because the petitions make the same arguments as were made in the proceedings, the responses also repeat the arguments that were previously made in opposition. In their responses, UPPCo and UMEREC both indicate that they do not oppose billing the AES directly.

This issue was thoroughly analyzed by the Commission in each order. *See*, the November 21, 2017 order in Case No. U-18239, pp. 70-77; November 21, 2017 order in Case No. U-18248, pp. 71-78; November 30, 2017 order in Case No. U-18253, pp. 44-50; November 30, 2017 order in Case No. U-18254, pp. 37-43; and November 30, 2017 order in Case No. U-18258, pp. 40-46. The petitions repeat the arguments these parties made in the proceedings, which were considered by the Commission and rejected for the reasons articulated in each order. Rule 437 provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. The Commission has often stated that a petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing. These parties present no errors, newly discovered evidence, or unintended consequences of the determination to assess a capacity charge on AES customers who receive capacity service from the utility. The petitions for rehearing of this issue are denied.

Application of the Capacity Charge to Choice Customers on a Pro Rata Basis

CNE argues that the Commission erred when it directed utilities to assess the capacity charge on AES customers on a pro rata basis. CNE contends that the AES should be able to determine the amount of the charge, or, at a minimum, who among its customers should be assessed.

In response, DTE Electric contends that CNE simply voices its disagreement with the Commission's determination to place the charge on the customer, which does not provide a basis for rehearing. UMERG asserts that CNE's petition could be denied on grounds that CNE failed to provide any detail regarding how an alternative proposal would work. UMERG states that it does not oppose billing a capacity charge to an AES customer in an amount agreed to by the AES and the customer, but states that it requires timely documentation and full recovery of its revenue requirement. UMERG also posits that the AES and the customer could make a financial arrangement without involving UMERG.

The Staff supports CNE's petition for rehearing on this issue, arguing that the issue requires clarification to indicate that the default method for assessing the charge will be the pro rata method, but that AESs may present evidence in a show cause proceeding supporting a different allocation method.

The Commission finds that CNE's request does not meet the standards of Rule 437 and should be denied. CNE simply offers another argument in favor of placing the charge on the AES rather than the choice customer receiving the service. The Commission thoroughly explained the rationale for the pro rata choice customer charge. *See*, the November 21, 2017 order in Case No. U-18239, pp. 70-77; November 21, 2017 order in Case No. U-18248, pp. 71-78; November 30, 2017 order in Case No. U-18253, pp. 44-50; November 30, 2017 order in Case No. U-18254, pp. 37-43; and November 30, 2017 order in Case No. U-18258, pp. 40-46. The Commission does not

share the Staff's concern that parties may decide that they are precluded from making arguments regarding allocation of the capacity charge in a show cause proceeding. CNE has failed to show the Commission's decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences, and the petition for rehearing of this issue is denied.

Application of the Capacity Charge to Cloverland's Customers

Cloverland seeks rehearing of the Commission's decision to set a capacity charge for Cloverland's full service member-regulated customers, arguing that the decision is unlawful because MCL 460.36(2) prohibits the Commission from setting rates for the full service customers of a member-regulated cooperative such as Cloverland. Cloverland refers to the evidence it presented, and repeats the arguments that it made in the proceeding.

In response, the Staff points out that Cloverland's petition fails to include new evidence, facts, or circumstances arising after the close of the record, or unintended consequences of the order, that merit rehearing. With respect to the issue of application of the charge to both full service and choice customers, the Staff repeats the arguments it made during the proceedings.

The Commission provided a thorough analysis of this issue in the November 30, 2017 order in Case No. U-18258, pp. 46-48, addressing each of Cloverland's contentions in this matter, including the role of 2008 PA 167. In its petition, Cloverland presents no errors, newly discovered evidence, or unintended consequences of the determination, and the Commission finds that the request for rehearing of this issue should be denied.

Cloverland also seeks reopening of the record to allow the utility to present evidence of the "negative impact and unintended consequences" of the rate changes accruing from the Staff's rate design. Cloverland's petition, p. 7. Cloverland argues that the capacity charges are unreasonable, and that the Staff failed to consider Cloverland's rate structure.

In response, the Staff contends that Section 6w(3) mandates the calculation of the SRM charge and requires that the charge be the same for full service and choice customers. The Staff further contends that reopening is unnecessary because, if Cloverland finds that rates are distorted in some way, the utility is free to adjust other rate components as it sees fit to address the distortion.

Rule 436(1) allows for reopening when necessary for the development of a full and complete record, or when there has been a change in condition of fact or law such that the public interest requires reopening. The Commission finds that Cloverland has failed to show that the record in this matter is incomplete, or that there has been a change in fact or law. Cloverland's request to reopen the record mirrors the arguments that the utility made in the proceeding. Cloverland agreed with the Staff's proposal to use the cost of service study (COSS) to determine the initial charge, but later argued that the COSS needed updating. The Staff did not disagree but recommended "that the company implement new rates based on an updated COSS and then apply for a change in the capacity charge in order to properly reflect the changes consistent with Act 341," and the Commission agreed. November 30, 2017 order in Case No. U-18258, p. 39. This issue was squarely addressed by the Commission in the order, but Cloverland disagrees with the result. The Commission finds no grounds for reopening.

Request to Reopen the Upper Peninsula Proceedings

CNE seeks to reopen the proceedings decided by the November 30 orders (the Upper Peninsula cases) to allow the filing of evidence that would match the type of evidence relied upon in the November 21 orders with respect to how the amounts subtracted under Section 6w(3)(b) of Act 341, MCL 460.6w(3)(b), are calculated. Again, Rule 436(1) allows for reopening when necessary for the development of a full and complete record, or when there has been a change in condition of fact or law such that the public interest requires reopening.

Section 6w(3)(b) requires the Commission, when calculating the capacity charge, to subtract all non-capacity-related electric generation costs (net of projected fuel costs), including all energy market sales, off-system energy sales, ancillary services sales, and energy sales under unit-specific bilateral contracts. CNE notes that, in the November 21 orders, the Commission found that Energy Michigan offered appropriate evidence of the required subtractions. CNE contends that, in the Upper Peninsula cases, no party offered evidence of a similar type, and that this omission caused the Commission to set capacity charges in the November 30 orders that are higher than those set in the November 21 orders.

In response, the Staff supports CNE's motion to reopen the Upper Peninsula SRM proceedings for the limited purpose of taking evidence regarding the required subtraction of energy market sales. However,

While Staff agrees with reopening the case for this limited purpose, Staff does not agree with Constellation's suggestion that the Commission require the utilities and the Staff to present evidence on this subject. Staff recommends that the Commission reopen the record to give interested parties the opportunity, if they choose, to present evidence solely regarding the required subtractions.

Staff's answers, Case Nos. U-18253, U-18254, and U-18258, p. 9. Thus, the Staff suggests that the Commission allow 21 days for interested parties (other than the utility and the Staff) to file evidence on energy market sales, 14 days for rebuttal, one day for cross-examination, and a briefing schedule.

UPPCo opposes CNE's request on grounds that it fails to meet the standards for reopening. UPPCo argues that in the November 30 orders the Commission applied the requirements of Section 6w(3) to the record. UPPCo points out that CNE was a party to the Consumers and DTE Electric SRM cases, and thus CNE cannot argue that the evidence presented by Energy Michigan in those proceedings is newly discovered or arose subsequent to the Upper Peninsula proceedings,

because that evidence was available well before the records closed in the latter proceedings.

UPPCo contends that CNE could have presented more or different evidence in UPPCo's charge case, and notes that CNE provides no reason for failing to do so. UPPCo further notes that the Commission relied on the Staff's evidence, and the Staff supported its calculations as based on the cost of providing capacity service. UPPCo requests that, if the Commission grants reopening, it not limit the scope of the reopened proceeding as suggested by the Staff.

UMERC also opposes CNE's request to reopen on grounds that it meets neither of the standards set in Rule 436. UMERC argues that the Commission met the statutory requirement of Section 6w(3)(b) to exclude non-capacity related generation costs from the SRM charge. Noting that the Commission adopted the Staff's calculation, UMERC points to the testimony of Mr. Revere (the Staff's witness) in UMERC's case indicating that the Staff identified capacity related costs, and the testimony of the utility's own witness, Mr. Derricks, indicating that UMERC would not have any energy market sales. Thus, UMERC contends that there is no need to reopen the record. Additionally, UMERC notes that CNE's petition and motion fail to identify any non-capacity related costs that would be recovered via the approved charge. UMERC explains that both the utility and the Staff presented proposed charges, and that CNE never provided any evidence that the proposed charges of either would recover non-capacity related costs. UMERC also contends that the November 21 orders did not provide new information or present a change in fact or law, particularly in light of the fact that CNE was a party in the Consumers and DTE Electric proceedings, and thus had access to Energy Michigan's evidence.

Discussion

The Commission agrees with UPPCo and UMERC and finds that CNE has not shown that reopening is necessary for the development of a full and complete record or due to a change in fact

or law. All of the parties to the Upper Peninsula proceedings had the opportunity to present evidence regarding the subtractions required by Section 6w(3)(b), including CNE. Each of the Upper Peninsula utilities presented evidence showing their determination of the correct capacity charge pursuant to Section 6w(3)(a) and (b). Case No. U-18253, 2 Tr 21-24; Case No. U-18254, 2 Tr 22-25; and Case No. U-18258, 2 Tr 22-26.

Moreover, in each case, the Staff provided testimony indicating that it had identified all capacity related costs in determining its proposed charge as required by Section 6w(3). Case No. U-18253, 2 Tr 76; Case No. U-18254, 2 Tr 61; and Case No. U-18258, 2 Tr 38. In each case, the Commission found that the record was sufficient to allow the determination of the SRM charge consistent with the requirements of Section 6w(3). The Commission further notes that these charges are subject to annual reconciliation and review under Section 6w(4) and (5). While the records in the other proceedings yielded calculation methods that will be useful in future capacity charge review cases for these Upper Peninsula utilities (assuming the utilities have the requisite types of sales), the Commission is not persuaded that this renders the records in the Upper Peninsula SRM proceedings incomplete, especially in light of the fact that each utility provided specific information regarding its calculation method. As the utilities themselves pointed out, they are not located in the same Midcontinent Independent System Operator, Inc. local resource zone as the Lower Peninsula utilities. Given this fact, and the myriad other differences among the five affected utilities, the Commission does not find it surprising that the capacity charges differ among the utilities. That difference does not provide grounds to reopen these matters.

THEREFORE, IT IS ORDERED that the petitions for rehearing and reopening filed in Case Nos. U-18239, U-18248, U-18253, U-18254, and U-18258 are denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the appropriate court within 30 days of the issuance of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of February 5, 2018.

Kavita Kale, Executive Secretary